IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. GORDHAN SINGH & OTHERS.

D. B. CRIMINAL APPEAL NO. 354/84

Under Section 378 (iii) & (i), Cr.P.C.,against the Judgment dated 29-03-1984,passed by Shri S.B.Srivastava, RHJS,Sessions Judge, Pali, in Sessions Case No.24/80.

DATE OF JUDGMENT :::: 01-10-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for the State – appellant.
Mr. Manish Shishodia, for accused – respondents.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):-

Aggrieved by the judgment dated 29.03.1984, passed by the Sessions Judge, Pali in Sessions Case No.24/80, this appeal has been preferred by the State of Rajasthan.

The facts giving rise to the present matter are that one Shiv Singh s/o. Ram Chandra r/o. Village Nimbara along with Jagidsh Singh and Gordhan Singh gave a written report to Sarpanch Tej Singh that Lachhmo w/o. Bhanwar Singh seems to have been killed and her body is lying on the cremation ground and 3 – 4 persons are trying to cremate her, thus they should be stopped to do so. Tej Singh, Sarpanch, gave written complaint at Police Chowki, Somesar Station on 27.09.1979. The Police had not found it to be a clear case of murder as the report was made on hear-say statement, therefore, inquiry was held under Section 174 of Cr.P.C. During the course of said inquiry, some suspicion came regarding murder of Lachhmo. Thus, Police registered a case under Sections 302, 34, 201 and 511 of IPC. After registration of case, ususal investigation was conducted by the Police and, thereafter, challan was filed in the Court of the Chief Judicial Magistrate, Pali, from where, the case was committed to the trial Court.

The trial Court framed charges against the accused under Sections 302, 201 and 511 of IPC. The charges were explained

to the accused, who denied charges and claimed trial. At the trial, prosecution produced twenty-three witnesses and exhibited fifteen documents. In defence, statements of eight witnesses were recorded, whereas ten documents were exhibited. The statements of accused were recorded under Section 313 of Cr.P.C.

The trial Court, vide its impugned judgment, acquitted all the accused by giving them benefit of doubt on the ground that the prosecution could not prove its case beyond doubt. The State of Rajasthan was not satisfied with the judgment, thus the judgment of the trial Court is being challenged.

The learned Public Prosecutor, appearing for the State, urged that the learned trial Court, ignored the statements of the witnesses which was sufficient to prove that all the accused participated in the crime with a common intention. Referring to the circumstantial evidence, it was urged that as per the statements of prosecution witnesses, deceased Laxmi was last seen with the accused, followed by a fact that deceased and accused were not having cordial relations, rather she was beaten by the accused on many previous occasions, and it came on record that accused Gordhan Singh had stated that he is going to kill Laxmi on the day of occurrence the thus prosecution

proved its case. The accused, having not come with clear statement as to how Laxmi died, thus looking to all these circumstances, it was sufficient to draw conclusion that accused were guilty of commission of offence. Thus, learned counsel prayed that judgment of the trial Court is not sustainable and deserves to be set aside.

On the other hand, learned counsel, appearing for the non-appellants, argued that prosecution could not produce circumstantial evidence so as to connect accused with the crime. The contradiction in the statement of the witnesses was apparent and otherwise, there was no corroboration of the statements of the prosecution witnesses. It was submitted that prosecution witnesses stated different story of the occurrence and the statement of Shivlal was not then corroborated by the witness Jagdish, whose presence was shown by witness Shivlal to prove that accused Gordhan was stating that he is going to kill Lachhmo. According to the learned counsel for non-appellants, the trial Court has taken into consideration all these aspects and, thereafter, only finding was arrived at, holding that the prosecution could not prove its case beyond doubt.

To consider the rival submissions of the learned counsel for the parties, we have carefully gone through the record . For

marshaling the evidence in appeal, it is necessary to peruse the statements of witnesses and to further consider other material to find out as to whether findings recorded by the trial Court are correct or not?

The prosecution produced as many as twenty-three witnesses to prove its case. Out of which, few witnesses are material. Thus, their statements are considered by us. PW 1 Shiv Singh, in his statement, stated that he was sitting on the main entrance Gate of village Nibara along with Gordhan Singh and Jagdish. At that time, Gordhan Singh's mother, Gordhan Singh and Gordhan Singh son's wife passed them, accused Gordhan Singh was threatening deceased Laxmi that she is not worth living, thus is to be killed and, thereafter, only he will take his tea. All the three were going towards a well. The witness clarified that one Gordhan Singh sitting along him was different. Second day, witness could know that Bhanwar Singh's wife Lachhmo has been killed and his relatives are going for the cremation. Immediately, it was thought that the matter should be reported to the Panchayat, so that the cremation may be stopped. In the cross-examination, the said witness admitted that in his police statement, he had not shown presence of Jagdish and Gordhan Singh along with him at the time when accused was threatening deceased Laxmi. Witness further

admitted that in his police statement, presence of Gordhan Singh's mother and daughter is not stated, coupled with the fact that he had not stated that Gordhan Singh was going towards a well. Thus, lot of contradictions exist in his court statement vis-a-vis the Police statement. The witness, however, admitted that he is having partnership with Ramnarain Singh.

PW 2 Ratan stated that on the first day of Navratra, at around 10.00 a.m., Lachhmo, Gordhan Singh and his mother were going towards well, out of which two females were weeping. The females were followed by Gordhan Singh, Bhanwar Singh and Vijay Singh. On the following day, Lachhmo's body was brought to the cremation ground from Gordhan Singh's well. On asking about the death, one Saroj informed that sister died out of snake bite. If her statement is looked along with the statement of Shiv Singh (P.W.1), then presence of Bhanwar Singh and Vijay Singh are added and she has not stated that accused Gordhan Singh was threatening Lachhmo. In her cross-examination, she had admitted that she had not reported the fact stated by Suraj about death of Lachhmo out of snake bite, other than Police. The witness further admitted that she cannot state as to how many persons passed through the way in a day and even she cannot name them. Thus, it has come out from the statement that witness

exceptionally remember visit of accused along with the deceased.

Bhanwar Lal (P.W.3), in his statement, stated that when he received information about the death of Lachhmo, then visited their house, where it was found that Lachhmo was lying in the Chowk. On the cremation ground, Himmat Singh stopped accused and others to cremate Lachhmo and, at that stage, witness went back to his place of residence. PW 5 Dhokal Singh stated that fact of snake bite was given to him by Girdhari Singh, but said statement was refuted by Himmat Singh, stating that Lachhmo is being killed. The witness, however, stated that due to his ill-health, he had not visited any place.

Witness Hanuman Singh (P.W.6), in his statement, stated that when he tried to stop Gordhan Singh for cremation, then Vijay Singh gave him a lathi blow on his head. In the cross-examination, he admitted that Lachhmo was his cousin sister. The witness further admitted that he had lodged FIR against Vijay Singh and further moved an application for cancellation of bail, on the earlier occasion. The witness, however, pleaded ignorance about the date and time when he was called by Himmat Singh and Khinv Singh.

Witness Remeshwar Singh (P.W.7) is real brother of deceased Lachhmo, who stated that Lachhmo's mother-in-law was having illicit relations with Ramnarain Singh and Lachhmo was also forced to keep such relations with Ramnarain Singh. However, when Lachhmo refused to do so, Vijay Singh and Suraj had beaten her. On 01.10.1979, he received a telegram, thus he reached accused village on 03.07.1979, where it was found that Lachhmo is no more. His aunt then informed that Lachhmo has been killed.

Witness Himmat Singh (P.W.9) stated that he had heard loud noise of Gordhan Singh, Bhanwar Singh and Vijan Singh. After hearing those noise, when he visisted Gordhan Singh's home, then found that they were abusing Lachhmo and when witness tried to intervene, then Gordhan Singh and Bhanwar Singh stated that they will not sit quiet till Lachhmo is killed. Next day morning, dead body of Lachhmo was brought to the cremation ground. The witness, however, admitted that he had not stated fact of quarrel to Lachhmo's relative.

Jaini (P.W.11) is aunt of deceased Lachhmo. The said witness stated that deceased Lachhmo visited her on many occasion and stated that her in-laws used to beat her. On previous night, Lachhmo remained with her for the whole night.

Next day morning when her grand mother-in-law came, then Lachhmo stated that she is ready to go back to home, but she will not go on the well. All of a sudden, accused came there and started abusing Lachhmo and, thereafter, Lachhmo was not seen alive. In the cross-examination, the witness admitted that he had not seen Gordhan Singh and Vijay Singh beating Lachhmo.

Witness Devaram (P.W.14) stated that Vijay Singh called him, stating that Bhanwar Singh's wife Lachhmo fell in the well. Gordhan Singh went into the well and brought out the dead body. The body was, thereafter, brought in the cremation ground, but Khinv Singh and Himmat Singh did not allow cremation of the dead body.

Last important witness is Dr.Bhikha Ram who had conducted post-mortem of deceased Lachhmo. As per the post-mortem report, thirty two injuries were found which were all simple in nature and caused by blunt weapon, out of those injuries, twelve injuries were found to be old one. The witness had admitted that if someone falls in a well, then the part of body touching the wall can sustain such injuries, but while taking out the body, such injuries cannot come.

Considering the statements of witnesses, it becomes clear

that there is no eye witness of the occurrence. Thus, present case is based on circumstantial evidence. Hence, it is necessary for the prosecution to prove its case by showing chain of circumstances to connect accused with the crime. If those circumstances fall short to prove guilt of the accused, then an order of conviction cannot be passed. The circumstances projected by the prosecution to connect accused with the crime, seems to be mainly -

(1) That accused was last seen with the deceased.

(2) Deceased and accused were not having cordial relations.

(3) Accused threatened deceased to kill her.

(4) Accused were trying to cremate deceased hurriedly to suppress the evidence.

We are required to see as to whether those circumstances are proved by the prosecution or not and as to whether those circumstances are sufficient to complete a chain of events to connect the accused with the crime beyond doubt, because it is well known principle of criminal jurisprudence that suspicion cannot take place of proof to hold any accused as guilty. Considering these broad principles, the matter is to be seen.

So far as the first circumstance is concerned, as per the statement of Shiv Singh, he had seen Gordhan Singh, his mother and Lachhmo going towards well in day time, where accused was threatening deceased. It is only a proof of the fact that during the day time, accused and deceased were seen together, more specifically at around 10.00 a.m., in view of the statement of witness Ratan (P.W.2). The occurrence has not taken place immediately after the accused and deceased were seen together, but it was an event which took place long thereafter, as same was noticed almost a day after hearing those threatenings. If the statement of PW 11 Jaini is also considered, then it is found that she being the aunt of deceased, stated that deceased stayed with her previous night of occurrence having certain injuries and following morning, accused had taken her away, but, in her cross-examination, she had admitted she had not seen Gordhan Singh and Vijay Singh beating Lachhmo and admitted they had not came to her place and not seen Gordhan and Vijay Singh taking Laxmi to the well. Thus, a new story is given. Further, Smt.Ratan, in her statement, stated that not only Gordhan Singh, his mother and deceased were seen going together, but said witness further added that she had seen Bhanwar Singh and Vijay Singh also. The presence of Bhanwar Singh and Vijay Singh has not been corroborated by Shiv Singh.

Thus, first circumstance is not proved conclusively, as it is based on doubtful statements.

The second circumstance is regarding the relations of accused and deceased. In that regard, statement of Rameshwar Singh is material, who had stated that Lachhmo informed him that her mother-in-law is pressing her to have illicit relations with Ramnarain Singh and when it was denied, then Vijay Singh and Suraj had beaten her. This part of the story has not been corroborated by any other witness, because Jaini (P.W.11), in her statement, had stated that when deceased Lachhmo visited her previous night of the occurrence, then Lachhmo stated that she was beaten by her in-laws, because she had taken out wheat and grand it but witness has not stated that for the reason that deceased was not ready to maintain illicit relationship with Ramnarain Singh thus beaten. Therefore, it becomes clear that story taken up by Rameshwar Singh was not corroborated by any other witness rather new story was given. Himmat Singh had stated that he had seen Vijay Singh, Gordhan Singh and Bhanwar Singh abusing Lachhmo, a day before the occurrence and when he tried to intervene, it was stated by Gorhdan Singh and Bhanwar Singh that they will not sit quiet, till Lachhmo is killed. It is quite unnatural that a person, having noticed such occurrence, will not report the

matter to the Police or even to the villager, and this is again not been corroborated by any other witness. Even Jaini, who is aunt of deceased, admitted in her cross-examination, that she has not seen Gordhan Singh and Vijay Singh beating deceased Lachhmo, therefore, it becomes clear that the prosecution could not prove that accused and deceased were not having cordial relations, inasmuch as the statements of witnesses are not corroborative rather give different stories.

The next circumstance is based on statement of Shiv Singh who stated that they heard Gordhan Singh threatening deceased. Shiv Singh stated that he was sitting on the main gate of the village, Gordhan, his mother and deceased Lachhmo were seen going towards well and, at that time, Gordhan Singh was stating Lachhmo that she would be killed. Ratan, in her statement, stated that she had seen not only deceased Lachhmo, Gordhan Singh and his mother, but also Bhanwar Singh and Vijay Singh, going towards well. Thus, said witness has not corroborated the statement of Shiv Singh and further, the witness had not stated that accused Gordhan Singh was threatening Lachhmo. Thus, there is contradiction in the statement of two witnesses.

The other circumstance is regarding cremation of deceased

by the accused. The trial Court has considered this aspect and came to the conclusion that accused were not trying to go for cremation in hurry, because before cremation, they tried to call villagers. However, when no-body came there, then they were left with no option, but to complete the cremation ceremony. The said finding is not being questioned during the course of arguments, thus same is maintained.

Considering all the circumstances to see as to whether they are proved or not, our conclusions are that none of the circumstances could be proved by the prosecution beyond doubt, coupled with the fact that there exists no evidence to the effect that accused was seen beating deceased Lachhmo at any point of time. Considering the material on record, we find that deceased and accused were residing in such a habitant where houses and hutments were existing close to each other and, in those circumstances, if some body is given as many as thirty-two injuries and the same are not noticed by any one, create a situation which cannot be believed. In any case, all the injuries sustained by deceased were found to be simple and as per the statement of PW 21 Dr.Bhikha Ram, all the injuries were caused by blunt weapon and otherwise found to be simple and it was cumulative effect of the injuries that deceased died. Hence, if the accused were having intention to kill deceased, then they will not

cause simple injuries, thereby even the medical evidence does not support the prosecution case.

The learned trial Court further recorded its finding that even prosecution could not prove motive behind the crime, however, even if we ignore this aspect then also, absence of chain of circumstances to connect accused with the crime an order of conviction cannot passed. In view of the discussion made by us as well as the finding recorded by the Tribunal, we do not find substance in any of the arguments of the learned Public Prosecutor, appearing for the appellant – State.

As a conclusion of the discussions made above, we are of the view that the prosecution falls short of proof of crime against the accused. We find no perversity in the judgment of the trial Court thus while dismissing the appeal, we affirm the judgment of the trial Court. The accused need not to surrender.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J
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